



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 28, 1995

James E. Bruseth, Ph.D.  
Department of Antiquities Protection  
Deputy State Historic Preservation Officer  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711-2276

OR95-150

Dear Dr. Bruseth:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 31562.

The Texas Historical Commission (the "commission") has received a request for information relating to defaulted antiquities permits. Specifically, the requestor seeks "a copy of the current CTA Contractor's List that your agency currently hands out to those parties that your office requires archaeological work for any given project." In addition, the requestor seeks the following:

A complete list of each and every currently defaulted permit, listing the TAC Permit Number, the holder of the permit, and the sponsoring agency.

A complete list of each and every defaulted permit in the past, listing the TAC Permit Number, the holder of the permit, and the sponsoring agency.

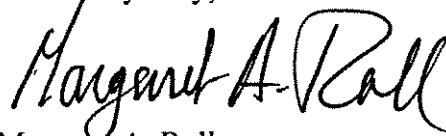
A complete list of each and every defaulted permit in the past, listing the TAC Permit Number, the holder of the permit, the sponsoring agency, and any new extensions provided that renewed said permits and removed them from the defaulted status.

You have submitted some of the requested information to us for review. You claim that section 552.104 of the Government Code excepts this information from required public disclosure. As you do not comment on the remainder of the requested information, we presume that it has been or will be made available to the requestor.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. Open Records Decision No. 541 (1990). Ordinarily section 552.104 cannot be asserted to protect a governmental body's "competitive advantage" because a governmental body cannot be regarded as being in competition with private enterprise. *See* Open Records Decision No. 463 (1987) at 2. *But see* Open Records Decision No. 593 (1991) (concluding that governmental body might be deemed, under certain circumstances not present here, to be "competitor" in marketplace). Thus, section 552.104 is usually asserted to protect only a governmental body's interests in a pending competitive bidding situation, not the interests of third parties. *See* Open Records Decision No. 541 (1990) at 4-5. You do not indicate, nor is it otherwise apparent, that the information at issue here relates to a particular competitive bidding situation in which the commission is currently involved. Moreover, we do not understand how release of the requested information would harm the commission's interests even if it related to a pending competitive bidding situation. Finally, you have given us no reason to believe that the commission's interests as a "competitor" in the marketplace are implicated in this request. Accordingly, we conclude that the commission may not withhold the requested information under section 552.104 of the Government Code. The requested information must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll". The signature is written in dark ink and is positioned above the printed name.

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Ref.: ID# 31562

Enclosures: Submitted documents

cc: Mr. Michael R. Bradle  
P.O. Box 1406  
Lampasas, Texas 76550  
(w/o enclosures)